

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 10, 1974

LEGISLATIVE REFERRAL MEMORANDUM

No objection

To: Legislative Liaison Officer
Department of Defense - Department of Commerce
Department of the Interior - Department of the Treasury
Department of Transportation - Department of Justice
National Security Council - Environmental Protection Agency
✓ Central Intelligence Agency - National Science Foundation
Agency for International Development
Council on Environmental Quality
Subject: Proposed Executive Branch report, prepared by the
NSC Interagency Task Force on the Law of the Sea, on S. 1988,
the "Interior Fisheries Zone Extension and Management Act of
1973."

The Office of Management and Budget would appreciate receiving the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

- () To permit expeditious handling, it is requested that your reply be made within 30 days.
- (xx) Special circumstances require priority treatment and accordingly your views are requested by Noon, Friday, January 11, 1974. Please transmit informally if time does not permit a written response.

Questions should be referred to John Fox
(103 x4580) or to George R. Gilbert (103 x4710),
the legislative analyst in this office.

[Signature]
James F. C. Hyde, Jr. for
Assistant Director for
Legislative Reference

Enclosures

The Honorable Warren G. Magnuson
Chairman, Committee on Commerce
United States Senate
Washington, D. C. 20510

Dear Senator Magnuson:

This letter presents the views of the Executive Branch on S.1988. It is in response to your requests to individual departments, which requests were in turn referred to the NSC Interagency Task Force on the Law of the Sea, in accordance with Executive Branch procedures.

S.1988, the "Interim Fisheries Zone Extension and Management Act of 1973," would, on an interim basis, extend

Contiguous fishing zone - 197 miles beyond U.S.
the United States' contiguous fisheries zone from its present width of nine miles beyond our three-mile territorial sea to a width of one hundred and ninety-seven miles beyond the territorial sea. The bill also provides for the extension of United States jurisdiction over anadromous fish of U.S. origin to the full limit of their migratory range in the oceans, except within the territorial waters or fisheries zone of another country. Also under the bill the Secretary of State is required to seek, inter alia, treaties or international agreements with appropriate foreign contiguous States on the boundaries between the waters adjacent to the United States and waters adjacent to such foreign countries for the purpose of rational utilization and conservation of the resources covered by S.1988.

2 - Jurisdiction over Anadromous Fish
both in contiguous zone

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We recognize that the coastal fishermen of the United States have encountered severe problems in recent years and that over-fishing for some species has caused a depletion of the stocks involved. Accordingly, we are sympathetic with the need for a solution to the genuine problems which have prompted this bill. However, in our view the best solution can be attained by multilateral agreement in the Third United Nations Conference on the Law of the Sea. A substantial session of the Conference will be held in Caracas from June 20 to August 29 of this year.

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As you are aware, for the past three years we have been actively participating in preparatory negotiations for the Law of the Sea Conference and have forcefully put forth our fisheries position in that forum. A fully enforceable solution to the fisheries problem must be an internationally negotiated one supported by the community of nations. A unilateral declaration of fisheries jurisdiction at this time could seriously undermine our efforts in the Law of the Sea Conference and greatly hamper the chances for a satisfactory settlement of the fisheries question on a multilateral basis.

will negotiate

In preparatory negotiations for this Law of the Sea Conference, a large majority of nations have supported broad coastal State controls over coastal fisheries. The United

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Interim
States position is also designed to provide broad coastal State control. Thus, the outcome of the Conference is likely to be an international agreement which will substantially enhance coastal State, and thus United States, control over coastal stocks. It should also achieve a rational, effective management system for highly migratory species, as well as host State management jurisdiction and preferential rights to anadromous species.

Interim fisheries regime
Recognizing that the Law of the Sea Conference will take time to complete its work, and that there will be additional delays pending ratification, there is indeed an interim problem with respect to our coastal fisheries. In light of this problem, we have taken steps to enhance the protection of our coastal stocks and to alleviate the problems of our coastal fishermen until a new international legal system for fisheries management is established. First we have proposed that the fisheries regime agreed to by the Law of the Sea Conference come into effect on a provisional basis pending the actual entry into force of the treaty. Second, we are working to strengthen both bilateral and multilateral agreements with nations whose nationals conduct fishing operations off our coast.

The International Commission on the Northwest Atlantic Fisheries (ICNAF) reached agreement in October on a "two-tier"

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*Reduce
fish catch*

quota system proposed by the United States. Under this system, an "overall quota" would be set for each country fishing in the ICNAF area off our northeastern coast which would be less than the sum of the individual specie quotas for that country. In accepting this overall quota system for 1974, ICNAF members have agreed to reduce their fishing catch by over 22 percent from the 1972 and anticipated 1973 levels. Moreover, there is agreement on an even lower catch limit for 1975, and on a limit for 1976 which will allow the stock to recover to the level representing the maximum sustainable yield. The overall quota system and the level of agreed reduction in catch represent a significant step forward in protection of our fisheries. Furthermore, the United States has also been strengthening bilateral agreements to provide additional protection for our fisheries. For example, last June we renegotiated agreements with the U.S.S.R. and Poland which afforded new or expanded protection for species such as bluefish, lobster, yellowtail flounder, menhaden, scup, hake, and river herring in the northwest Atlantic.

We feel that these steps have significantly increased the protection for our coastal stocks, although we recognize that the problem is far from fully solved. A bill such as S.1988 which extends our fisheries jurisdiction could provide

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added protection for our coastal fisheries during this interim period. However, we believe that the legislation would nevertheless have serious harmful consequences both for the Law of the Sea negotiations and for the long term fishing interests of the United States.

Thus, the action would constitute unilateral action by the United States at the very time the world community is seeking a new regime for international fisheries through international agreement. Such unilateral action, in our opinion, runs counter to established fundamental principles of international law. It is the view of the United States that under existing international law no state has the right unilaterally to extend its fisheries jurisdiction more than twelve nautical miles from its coast, and we do not recognize claims to greater distances. A departure from this principle by the United States could unquestionably encourage similar claims by other countries. The nature of such foreign claims would not necessarily be influenced by the interim nature or "reasonableness" of our own action, and could include claims to other alleged rights such as those affecting navigation and overflight, straits, seabed resources, and scientific research. Moreover, this could lead some states to seek to delay or to impede the work of the Conference and could threaten the possibility of agreement. It would disrupt our

12 miles
rule 2.1.1

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cooperation with like-minded states in the Law of the Sea negotiations, and could directly undercut our fisheries proposal in the Conference. The interim character of the legislation does not render it less troublesome in these respects. In our opinion, the harm done to overall national interests in the achievement of a successful international agreement by this type of unilateral action would far outweigh any short-term, interim benefits of this legislation.

Moreover, a unilateral extension of our contiguous fisheries zone as outlined in the bill would not fully protect all our fishing interests, which are both coastal and distant-water. Our distant water fishing interests, such as the tuna and shrimp industry, would actually be prejudiced by our unilateral action. The United States would be compelled, in effect, to recognize extended fisheries zones of other coastal States, at least to the extent of our own unilateral claim, ^{and} in addition to a direct effect on our distant water fishing rights, this would have detrimental implications for the coverage of the Fisherman's Protective Act of 1967. Furthermore, there is no reason to believe that distant water fishing nations would recognize our unilateral claims, thereby creating serious enforcement and foreign policy problems.

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At preparatory sessions for the Law of the Sea Conference, the United States has introduced a fisheries proposal which offers a rational system of managing fisheries and also accommodates various segments of the United States fishing industry, as well as the diverse interests of the international community.

Our proposal is based on an approach that reflects our overall view that coastal State control over coastal species and host State control over anadromous fish should be subject to international standards and compulsory dispute settlement so as to protect the interests of all States and the international community in general. The jurisdiction exercised by the coastal State over coastal species would follow each stock as far offshore as the stock ranges. Each coastal State would have a preferential right to that portion of the allowable catch it could harvest. The remaining portion would be open to harvest by fishermen of other nations, subject to nondiscriminatory coastal State conservation measures and reasonable management fees to defray their share of the cost of such regulation. The extent to which the coastal State preference would reduce traditional distant-water fishing would be determined through negotiation in the Law of the Sea Conference.

Under our proposal, anadromous species would be handled in a manner somewhat similar to that of coastal species as the host State

of origin would be exercising jurisdiction. On the other hand, highly migratory stocks, such as tuna, would be managed by international organizations in which all fishing and interested coastal States could participate.

As indicated above, in the context of the preparatory negotiations, a large majority of nations have supported broad coastal State controls over coastal fisheries. Even major distant-water fishing States have indicated that an overall Law of the Sea treaty will include greater protection for coastal States' fisheries interests than exists at present. Thus, we feel that the best resolution of the fisheries question can be attained by multilateral agreement in the Law of the Sea Conference.

For the reasons stated above, the Executive Branch cannot support the enactment of S.1988 or similar legislation at the present time.

Though we cannot support enactment of S.1988, I would like to thank you on behalf of the NSC Interagency Task Force for your great interest in and assistance with the Law of the Sea negotiations.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

With warm regards,

Sincerely,

John Norton Moore
Chairman, NSC Interagency Task
Force on the Law of the Sea
Representative
of the President for the Law
of the Sea Conference